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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Hearing:
September 7, 2000

Paper No. 13
HWR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re First Security Capital, L.L.C.

Serial No. 75/450,558

William J. Mason of Rhodes & Mason, PLLC
for First Security Capital, L.L.C.

Robert Clark, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Hairston, Chapman and Wendel, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

First Security Capital, L.L.C. has filed an
application to register the mark 90% STOCK LOAN for
"financial services, namely, making nontaxable loans
secured by stock."¹

Registration has been finally refused under Section
2(e)(1) of the Trademark Act on the ground that the mark is

¹ Serial No. 75/450,558, filed March 16, 1998, claiming first use
dates of August 1997.

merely descriptive. The refusal has been appealed. Both applicant and the Examining Attorney have filed briefs and both participated in an oral hearing.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic or feature of the goods or services with which it is being used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether or not a particular term or phrase is merely descriptive is determined not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the designation is being used, and the significance the designation is likely to have to the average purchaser as he or she encounters the goods or services bearing the designation, because of the manner in which it is used. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary that the term or phrase describe all the characteristics or features of the goods or services in order to be merely descriptive; it is sufficient if the term or phrase describes one significant attribute thereof. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

In the present case, applicant's financial services have been identified as the making of nontaxable loans

secured by stock. As noted by the Examining Attorney, the specimens of record are brochures which describe these services as the provision of "90% non-recourse stock loans." Further statements found in the brochures include, in relevant part:

We provide 90% loans against most free-trading securities ...;

If you decide to borrow against your stock ...

You get a 90% loan ...

With a 90% stock loan though, you realize \$90,000 in cash.

The Examining Attorney maintains that the mark 90% STOCK LOAN is merely descriptive of financial services such as applicant's in which customers are being loaned up to 90% of the value of their stock using the stock as collateral.

Applicant counters with the argument that the term "stock loan" has two known meanings in the financial world and the initial reaction of purchasers would be to ascribe one of these ordinary meanings to the term as used in applicant's mark. Applicant points to the Nexis excerpts introduced by the Examining Attorney for the purpose of showing use of the term "stock loan" in the financial field as evidence that the term may either be used to describe a program in which companies loan money to their executives

for the purpose of purchasing stock of the corporation or to describe an aspect of "short selling" of stocks in which the trader "borrows" stock in order to make a trade.

Applicant insists that purchasers' immediate impression would be that applicant is using the term "stock loan" in one of these two senses and would only conclude after some thought that the term, when combined with "90%," has a connotation unrelated to either usage.

We find sufficient evidence of record to establish that purchasers, upon encountering applicant's services bearing the mark 90% STOCK LOAN, would immediately be apprised of the nature of the services. As earlier pointed out, the mark is not to be considered in the abstract, but rather in relation to the services identified in the application. While we agree that the Nexis excerpts show that the term "stock loan" has other known meanings in the financial world, this fact is irrelevant. Those meanings attach to totally different services or activities, not the services being offered by applicant.

On the other hand, evidence of the context in which an applicant is using the mark in brochures or other advertising materials is clearly probative of the reaction of prospective purchasers to the mark. See *In re Pharmaceutical Innovations, Inc.*, 217 USPQ 365 (TTAB 1983).

Here, applicant's specimens show descriptive uses of the entire phrase sought to be registered as well as of the term "stock loan" such that it is clear that, in this context, the term is being used to describe a loan in which the purchaser is borrowing against his or her stock.

Contrary to applicant's arguments, there is no incongruity in the manner in which applicant is using the term.

Instead, it is readily apparent that prospective purchasers would immediately grasp the informational significance of the term "90% stock loan" as it is being used in connection with applicant's services.

Accordingly, we find the mark 90% STOCK LOAN to be merely descriptive when used in connection with applicant's financial services of making nontaxable loans secured by stock.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

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